

AMENDED IN SENATE MAY 12, 2003

AMENDED IN SENATE APRIL 22, 2003

**SENATE BILL**

**No. 1009**

**Introduced by Senator Alpert**

February 21, 2003

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An act to amend Section 6487 of, and to add and repeal Sections 6452.1, 6487.3, and 18510 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1009, as amended, Alpert. Use tax collection: income tax forms.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Existing law requires retailers, as specified, to register with, and to obtain a seller's permit from, the State Board of Equalization. The State Board of Equalization issues forms for the computation and payment of sales and use taxes collected or owed by those retailers. There is no requirement for ~~individuals~~ *persons*, other than retailers, that owe use taxes to register with the State Board of Equalization. Consequently, those persons do not receive forms for the computation and payment of use taxes.

This bill would, for the period beginning on January 1, 2004, and ending on December 31, 2009, authorize ~~an individual~~ *a person* to make an irrevocable election to report qualified use tax, as defined, on that ~~individual's California personal~~ *person's* income tax form.

This bill would require the Franchise Tax Board to revise the ~~personal~~ income tax ~~return~~ *returns* to allow ~~an individual~~ *a person* to report and

remit qualified use taxes to the Franchise Tax Board. This bill would require the Franchise Tax Board to remit the qualified use taxes collected, less the Franchise Tax Board's costs of administration, to the State Board of Equalization.

~~This bill would transfer the authority to collect the qualified use tax reported on an individual's personal income tax return to the Franchise Tax Board, and would authorize the Franchise Tax Board to impose applicable interest and penalties in the same manner as those penalties and interest are imposed under the Personal Income Tax Law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6452.1 is added to the Revenue and  
2 Taxation Code, to read:

3 6452.1. (a) Notwithstanding ~~Sections 6451 and 7171,~~  
4 ~~Section 6451,~~ every individual person that purchases tangible  
5 personal property, the storage, use, or other consumption of which  
6 is subject to qualified use tax, as defined in subdivision (b), that is  
7 otherwise required to report and remit that tax pursuant to this part,  
8 may elect to report and remit qualified use tax on ~~his or her~~  
9 ~~California personal income tax return that is required to be filed~~  
10 ~~pursuant to Article 1 (commencing with Section 18501) of~~  
11 ~~Chapter 2 of Part 10.2.~~ *an acceptable tax return.*

12 (b) (1) A ~~taxpayer that reports his or her~~ person that reports  
13 qualified use tax on ~~the California personal income~~ *an acceptable*  
14 *tax return* is deemed to have made the election authorized by this  
15 section.

16 (2) (A) In the case of a married individual filing a separate  
17 California personal income *tax* return, an election may be made to  
18 report either one-half of the qualified use tax or the entire qualified  
19 use tax on his or her separate California personal income tax  
20 return.

21 (B) If an individual elects to report one-half of the qualified use  
22 tax, that election will not be binding with respect to the remaining  
23 one-half of the qualified use tax owed by that individual and that  
24 individual's spouse.

25 (c) An election to report qualified use tax on ~~the California~~  
26 ~~personal income~~ *an acceptable* tax return shall be irrevocable.

(d) For purposes of this section:

~~(1) “Individual” means any natural person.~~

(1) “Acceptable tax return” means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, or Section 18633.5 of Chapter 2 of Part 10.2.

(2) (A) “Qualified use tax” means the use tax imposed on the storage, use, or other consumption of tangible personal property, ~~used exclusively for personal purposes~~ within this state, that is brought into this state by ~~an individual or that is shipped to an individual~~ a person or that is shipped to a person within this state by a retailer located outside of this state.

(B) “Qualified use tax” does not include:

(i) Use tax that applies to a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use that applies to a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(ii) Use tax imposed on a vessel or aircraft.

(iii) Use tax imposed on a lessee of tangible personal property.

~~(iv) Use tax imposed on an individual if that individual’s use tax liability for the calendar year is four hundred dollars (\$400) or less.~~

~~(3) “Use tax” means the use tax imposed under the Sales and Use Tax Law (commencing with Section 6001) of this part, the use tax imposed the Bradley-Burns Uniform Sales and Use Tax Law (commencing with Section 7200), and the use tax imposed in accordance with Transactions and Use Tax Law (commencing with Section 7251).~~

(3) “Use tax” means the use tax imposed under this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(e) ~~If an individual elects to report qualified use tax on his or her California personal income tax return, that individual~~ a person elects to report qualified use tax on an acceptable tax return, that person shall comply with all of the following:

(1) The qualified use tax shall be reported on and remitted with ~~his or her timely filed California personal income~~ an acceptable tax return.

(2) The qualified use tax shall be reported on and remitted with ~~the California personal income~~ *an acceptable tax* return that is required to be filed for the taxable year in which the liability for the qualified use tax was incurred.

~~(f) (1) The responsibility and authority for the receipt and the collection of use tax reported as qualified use tax on an individual's California personal income tax return shall be transferred from the State Board of Equalization to the Franchise Tax Board.~~

~~(2) In lieu of the penalties and interest imposed under the Sales and Use Tax Law (commencing with Section 6001), the Bradley-Burns Uniform Sales and Use Tax Law (commencing with Section 7200), or the Transactions and Use Tax Law (commencing with Section 7251), the penalties and interest that apply to personal income taxes pursuant to Part 10.2 (commencing with Section 18401), shall apply to use tax reported as qualified use tax on an individual's California personal income tax return in the same amounts and manner as those penalties and interest apply to personal income tax.~~

~~(3) Notwithstanding paragraphs (1) and (2), any~~

~~(f) (1) The penalties and interest imposed under this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) shall apply to use tax reported as qualified use tax on an acceptable return.~~

~~(2) Any claims for refunds or credits of any use tax reported as qualified use tax on the California personal income~~ *an acceptable* tax return shall be made in accordance with Chapter 7 (commencing with Section 6901) of this part.

~~(3) Qualified use tax shall be considered to be timely reported and remitted for purposes of this part, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), if the qualified use tax is timely reported on and remitted with an acceptable tax return in accordance with the provisions of this section.~~

~~(g) Notwithstanding an individual's a person's election to remit and to report qualified use tax on the California personal income~~ *form an acceptable tax return*, the State Board of Equalization is not precluded from making any determinations for

1 understatements of qualified use tax against that individual person  
2 in accordance with Part 5 (commencing with Section 6451).

3 ~~(h) In the event the remittance of an individual that elects to~~  
4 ~~report qualified use tax on his or her California personal income~~  
5 ~~tax return is insufficient to satisfy the combined personal income~~  
6 ~~tax and qualified use tax liability of that individual, the amount~~  
7 ~~remitted shall be applied in the following order:~~

8 *(h) Any payment by a person that elects to report qualified use*  
9 *tax on an acceptable tax return shall be applied in the following*  
10 *order:*

11 (1) Taxes imposed under Part 10 (commencing with Section  
12 ~~17001~~ 17001) or Part 11 (commencing with Section 23001).

13 (2) Penalties and interest, if any, imposed under Part 10.2  
14 (commencing with Section 18041).

15 (3) Qualified use tax reported on that individual's California  
16 personal income tax return in accordance with this section.

17 (i) (1) *This section does not apply to a person who is otherwise*  
18 *required to hold a seller's permit or to register with the State Board*  
19 *of Equalization pursuant to Part 1 (commencing with Section*  
20 *6001) of this division.*

21 (2) This section applies to purchases of tangible personal  
22 property made on or after January 1, 2004, *in taxable years*  
23 *beginning on or after January 1, 2004*, and on or before December  
24 31, 2009, and as of that date is repealed unless a later enacted  
25 statute extends the repeal date.

26 ~~(2)~~

27 (3) Notwithstanding the repeal of this section, any provisions  
28 in this section or Section 18510 relating to collection activities  
29 attributable to qualified use taxes reported prior to the repeal date  
30 of this section shall continue in the same manner as if this section  
31 were still in effect.

32 SEC. 2. Section 6487 of the Revenue and Taxation Code is  
33 amended to read:

34 6487. (a) For taxpayers filing returns, other than a return  
35 filed pursuant to Section 6452.1, on other than an annual basis,  
36 except in the case of fraud, intent to evade this part or authorized  
37 rules and regulations, or failure to make a return, every notice of  
38 a deficiency determination shall be mailed within three years after  
39 the last day of the calendar month following the quarterly period  
40 for which the amount is proposed to be determined or within three

1 years after the return is filed, whichever period expires the later.  
2 In the case of failure to make a return, every notice of  
3 determination shall be mailed within eight years after the last day  
4 of the calendar month following the quarterly period for which the  
5 amount is proposed to be determined.

6 (b) For taxpayers filing returns on an annual basis, except in the  
7 case of fraud, intent to evade this part or authorized rules and  
8 regulations, or failure to make a return, every notice of a  
9 deficiency determination shall be mailed within three years after  
10 the last day of the calendar month following the one-year period  
11 for which the amount is proposed to be determined or within three  
12 years after the return is filed, whichever period expires the later.  
13 In the case of failure to make a return, every notice of  
14 determination shall be mailed within eight years after the last day  
15 of the calendar month following the one-year period for which the  
16 amount is proposed to be determined.

17 (c) The limitation specified in this section does not apply in  
18 case of a sales tax proposed to be determined with respect to sales  
19 of property for the storage, use, or other consumption of which  
20 notice of a deficiency determination has been or is given pursuant  
21 to subdivision (a) or (b) or pursuant to Section 6486, 6515, or  
22 6536. The limitation specified in this section does not apply in case  
23 of an amount of use tax proposed to be determined with respect to  
24 storage, use, or other consumption of property for the sale of which  
25 notice of a deficiency determination has been or is given pursuant  
26 to subdivision (a) or (b) or pursuant to Section 6486, 6515, or  
27 6536.

28 SEC. 3. Section 6487.3 is added to the Revenue and Taxation  
29 Code, to read:

30 6487.3. (a) (1) For ~~individuals~~ *persons* that elect to report  
31 qualified use tax in accordance with Section 6452.1, except in the  
32 case of fraud, intent to avoid this part or authorized rules and  
33 regulations issued by the board, or the gross understatement of  
34 qualified use taxes, every notice of a deficiency determination  
35 with respect to the qualified use tax shall be mailed within three  
36 years after the last day for which ~~the California personal income~~  
37 *an acceptable* tax return is due or filed, whichever occurs later.

38 (2) In the case of a gross understatement of qualified use tax,  
39 every notice of a deficiency determination with respect to the  
40 qualified use tax shall be mailed within six years after the last day

1 for which ~~the California personal income~~ *an acceptable* tax return  
2 is due or filed, whichever occurs later.

3 (3) For purposes of this subdivision a “gross understatement of  
4 qualified use tax” is a deficiency that is in excess of 25 percent  
5 of the amount of qualified use tax reported on ~~an individual’s~~  
6 ~~California personal income~~ *a person’s acceptable* tax return. In the  
7 case of married individuals filing separate California personal  
8 income tax returns, the total amount of qualified use tax reported  
9 will be considered in determining whether there is a gross  
10 understatement of qualified use tax.

11 (4) *For purposes of this section “acceptable tax return” means*  
12 *a timely filed original return that is filed pursuant to Article 1*  
13 *(commencing with Section 18501), Article 2 (commencing with*  
14 *Section 18601), Section 18633, or Section 18633.5 of Chapter 2*  
15 *of Part 10.2.*

16 (b) This section be operative on January 1, 2004, and shall  
17 remain operative until December 31, 2009, and as of that date is  
18 repealed unless a later enacted statute extends the repeal date.

19 SEC. 4. Section 18510 is added to the Revenue and Taxation  
20 Code, to read:

21 18510. (a) ~~The Franchise Tax Board shall, revise the personal~~  
22 ~~income tax return, shall revise the returns required to be filed~~  
23 ~~pursuant to this article, Article 2 (commencing with Section~~  
24 ~~18601), Section 18633, and Section 18633.5 in a form and manner~~  
25 ~~approved by the State Board of Equalization, to allow an~~  
26 ~~individual to report and remit a person to report and pay~~ qualified  
27 use tax in accordance with the provisions of Section 6452.1.

28 (b) ~~(1) The responsibility and authority for the receipt and the~~  
29 ~~collection of use tax reported as qualified use tax on an individual’s~~  
30 ~~personal income tax return pursuant to Section 6452.1 shall be~~  
31 ~~transferred from the State Board of Equalization to the Franchise~~  
32 ~~Tax Board.~~

33 ~~(2) In lieu of the penalties and interest imposed under the Sales~~  
34 ~~and Use Tax Law (commencing with Section 6001), the~~  
35 ~~Bradley Burns Uniform Sales and Use Tax Law (commencing~~  
36 ~~with Section 7200), or the Transactions and Use Tax Law~~  
37 ~~(commencing with Section 7251), the penalties and interest that~~  
38 ~~apply to personal income taxes pursuant to this part, shall apply to~~  
39 ~~use tax reported as qualified use tax on an individual’s California~~



1 ~~personal income tax return in the same amounts and manner as~~  
2 ~~those penalties and interest apply to personal income tax.~~

3 ~~(e) In the event the remittance of an individual that elects to~~  
4 ~~report qualified use tax on his or her personal income tax return is~~  
5 ~~insufficient to satisfy the combined personal income tax and~~  
6 ~~qualified use tax liability of that individual, the amount remitted~~  
7 ~~shall be applied in the following order: Any payment of a person~~  
8 ~~that elects to report qualified use tax on an acceptable tax return~~  
9 ~~shall be applied in the following order:~~

10 (1) Taxes imposed under Part 10 (commencing with Section  
11 ~~17001~~ 17001) or Part 11 (commencing with Section 23001).

12 (2) Penalties and interest, if any, imposed under this part.

13 (3) Qualified use tax as reported on that individual's California  
14 personal income tax return, in accordance with Section 6452.1.

15 ~~(d)~~

16 (c) (1) *The State Board of Equalization shall enter into an*  
17 *agreement with the Franchise Tax Board to provide for*  
18 *reimbursement to the Franchise Tax Board for the expenses*  
19 *incurred by the Franchise Tax Board to implement and administer*  
20 *this section.*

21 (2) The Franchise Tax Board shall ~~remit~~ *transfer* the qualified  
22 use tax ~~and any applicable interest and penalties collected~~  
23 ~~pursuant to Section 6452.1, less the Franchise Tax Board's costs~~  
24 ~~of administration, to the State Board of Equalization within 60~~  
25 ~~days received pursuant to Section 6452.1, to the State Board of~~  
26 *Equalization within 60 days from the date the use tax is received.*

27 ~~(e) This section shall be operative for taxable years beginning~~

28 (d) *This section shall be operative for returns filed for taxable*  
29 *years on and after January 1, 2004, and ending on or before*  
30 *December 31, 2009, and as of that date is repealed unless a later*  
31 *enacted statute extends the repeal date.*